

ADVISORY OPINION 2000-008

Any advisory opinion rendered by the registry under subsection (1) or (2) of this section may be relied upon only by the person or committee involved in the specific transaction or activity with respect to which the advisory opinion is rendered. KRS 121.135(4).

October 20, 2000

Mr. John Stephenson
213 Beechwood Road
Fort Mitchell, Kentucky 41017

Dear Mr. Stephenson:

This is in response to your September 20, 2000 letter requesting an advisory opinion regarding your participation in debates on a local public access cable television station, which you have proposed and in which you wish to appear.

You have provided a copy of the letter that you sent to your opponent for State Senator for the 11th District of Kentucky. You ask whether under Kentucky campaign finance law you may appear on public access television regardless of whether your opponent chooses to appear. In addition, you have submitted the mission statement from the Community Program Center's Policy and Procedure Manual and a "Fact Sheet" regarding public access channels from the Federal Communications Commission.

Although the Community Program Center ("CPC") did not submit a formal comment to the Registry, legal counsel for the Telecommunications Board of Northern Kentucky ("TBNK"), which operates the CPC, provided additional information by telephone. TBNK is an unincorporated government board that monitors cable operations

for Kenton and Boone Counties. Through a franchise agreement with the local cable company, TBNK owns, controls and, via CPC, manages the public, educational, and governmental channels ("PEG"), which have been set aside for public access. In CPC's mission statement, it states that "CPC will manage a community program channel designated for producers of public/community oriented programming which may include but not be limited to the following types of program content: sporting events, entertainment, current events/topical, information, and religious." This service is offered free to Kenton and Boone County residents. The programming is funded by franchise fee payments paid by the local cable company to TBNK.

The only programming limitation imposed by CPC is that "[p]rograms containing material defined by CPC policy, local, state, or federal law as obscene, libelous, slanderous, invasion of personal privacy or otherwise illegal will not be cablecast." CPC Policy & Procedures Manual, see also, 47 U.S.C. § 531(e) ("[A] cable operator shall not exercise any editorial control over any public, educational, or government use of channel capacity ... except a cable operator may refuse to transmit any public access program or portion of a public access program which contains obscenity, indecency, or nudity.") Commercial use of the public access channel is also prohibited. CPC Policy & Procedures Manual. Finally, TBNK's counsel confirmed that if a political candidate's message was cablecast, the opposing candidate would have equal time if desired.

Based on the foregoing information, your question is whether you may appear on a public access channel, in a debate format or alone, to discuss the issues and your candidacy.

In KREF Advisory Opinion 1994-017, the Registry opined that an organization that hosted a public forum for candidates would not be in violation of Kentucky campaign finance laws, and that no contributions to participating candidates would result. Therefore, the public access forum offered by CPC would not result in a contribution to your campaign, provided the air time and services offered are equally available to any other person, including your opponent. See also Federal Elections Commission Advisory Opinion 1998-17A.

However, unlike the organization that requested KREF Advisory Opinion 1994-017, which was not involved in advancing money, service or value to a specific candidate, your sponsorship of the scheduled events is subject to the Registry's jurisdiction. Although CPC offers free airtime and although your communications may not be an advertisement within the meaning of CPC's policy, television communications produced by you which expressly advocate your election (or your opponent's defeat) should comply with any applicable Federal Communications Commission ("FCC")

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regulations, as provided by KRS 121.190(1). Further, any expenses incurred by you relating to these events (production costs, advertising, etc.) must be reported pursuant to KRS 121.180(3).

This opinion reflects the Registry's consideration of the specific transactions posed by your letter. If you have any additional questions, please do not hesitate to contact the Registry staff.

Sincerely,

Rosemary F. Center
General Counsel

RFC/jh

Cc: Registry Members
Sarah M. Jackson, Executive Director